

Abstract

Forced Termination of Minority Shareholders' Participation in a Joint Stock Company

The diploma thesis deals with legal regulation of a phenomenon generally known as squeeze-out, introduction of which into the Czech legal order is still by many regarded highly controversial. The respective legal institute is subject to analysis from the standpoint of its economic determination.

The thesis itself is divided into three chapters: the first chapter provides an economic basis for permitting squeeze-out as a legitimate means of increasing efficiency of a joint-stock company. In brief the reasons can be characterized as extra expenditures originating in the presence of minority shareholders in the company, some of which have the nature of opportunity costs. However, the thesis further shows that the minority shareholders are not economically motivated to transfer their shares on the majority shareholder, mainly due to the free-rider problem. Squeeze-out then represents an efficient means of rationalizing the relations among shareholders within a joint stock company.

The second chapter is devoted to constitutional protection of property and its relation to forced cession of minority shareholders' shares in case of squeeze-out. The European Court of Justice as well as the Czech Constitutional Court held in their constant case law that the particular situation in a joint stock company under which squeeze-out is possible can be described as a collision of property law of the majority shareholder on one hand and minority shareholders on the other. As minority shareholders clearly represent an unjustifiable burden for the company –and in the very result for the majority shareholder, who bears most of the investment risk – the right of the majority shareholder must prevail. General relevance of this conclusion is then challenged by comparison with case law of the Constitutional Court of Georgia who ruled that the introduction of squeeze-out into Georgian legislature is contrary to Constitution as the interest in protection of minority shareholders within the conditions of Georgian post-transformational economy outweighs the interest of majority shareholders to streamline their business companies.

Finally chapter three explores the effective Czech legal regulation of squeeze-out. The reasonable scope of majority which should be associated with the right to squeeze-out minority shareholders is put in question. Moreover, inadequacies in legal regulation leading to failure to successfully squeeze-out all minority shareholders are stated in respect to several

special scenarios. The last part examines the legal term “adequate compensation” to squeezed-out minority shareholders, which should assure that the economic position of minority shareholders does not deteriorate. However, this is apparently not always true as empirical investigation clearly shows. As a possible cause the expert opinion, which is utilized in the process of ascertaining the adequate compensation, is closely inspected. It is held that the adequate compensation must be construed as a question of law rather than question of fact due to principal impossibility of its exact determination through an unbiased expert opinion. As the Czech statute law nor the case law does not provide for more detailed regulation or guidance the role of a court in particular cases is seen as crucial. On the other hand the position of minority shareholders in the proceeding concerning judicial review of the adequate compensation improved dramatically due to the new approach adopted by the Supreme Court of the Czech Republic in recent case law.